

**DX-401**

DB - ePlus v Lawson

 **O loughlin, Johanna (Vol. 01) - 04/26/2010**

**1 CLIP (RUNNING 00:26:13.762)**

 DIRECT EXAMINATION ...

**JO002**

**31 SEGMENTS (RUNNING 00:26:13.762)**



**1. PAGE 4:22 TO 5:04 (RUNNING 00:00:17.333)**

22 DIRECT EXAMINATION  
23 BY MS. HUGHEY:  
24 Q. Good morning, Ms. O'Loughlin. Could you state  
25 your full name for the record.  
00005:01 A. Johanna G. O'Loughlin.  
02 Q. You are the former vice-president and general  
03 counsel of Fisher Scientific; is that correct?  
04 A. That is correct.

**2. PAGE 5:15 TO 5:19 (RUNNING 00:00:18.500)**

15 Q. How long were you at Fisher?  
16 A. About 16 years.  
17 Q. What years were you there?  
18 A. I started in 1980 and I left in about March or  
19 April of 1996.

**3. PAGE 6:23 TO 7:05 (RUNNING 00:00:23.222)**

23 Q. Now, when you worked at Fisher Scientific in  
24 early 1990s, were you responsible for certain  
25 legal filings?  
00007:01 A. Occasionally.  
02 Q. Did you have responsibility for things like  
03 trademark applications?  
04 A. Generally under my oversight that would be the  
05 case.

**4. PAGE 7:18 TO 8:04 (RUNNING 00:00:46.565)**

18 Q. Can you please turn to what has been marked as  
19 Lawson Exhibit 40, L0260585 to L0260624. It  
20 appears to be entitled "Service Mark,  
21 Principal Register, Fisher RIMS."  
22 A. I have that.  
23 Q. What is this document?  
24 A. It says that it is just as you described it, a  
25 service mark, principal register. I really  
00008:01 don't know beyond that how to describe it.  
02 Q. What is this document dated?  
03 A. It says registered May 31, 1994 on the title  
04 line.

**5. PAGE 8:23 TO 9:12 (RUNNING 00:00:40.800)**

23 Q. Can you please turn to page L0260591?  
24 A. Yes.  
25 Q. Do you see at the bottom of the page the  
00009:01 signature block for Fisher Scientific Company?  
02 A. Yes.  
03 Q. Do you see it says, "Johanna G. O'Loughlin,  
04 Vice-president, general counsel"?  
05 A. I do.  
06 Q. That is you, correct?  
07 A. That is.  
08 Q. Is that your signature in the signature block?  
09 A. It is.

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10 Q. Could you please turn to the next page, page  
11 L0260592?  
12 A. I have it.

**6. PAGE 9:19 TO 9:25 (RUNNING 00:00:13.166)**

19 Q. And you signed this on behalf of Fisher  
20 Scientific?  
21 A. I did.  
22 Q. Were you working for Fisher Scientific that  
23 day that is dated below that, the 26th day of  
24 April 1993?  
25 A. I was.

**7. PAGE 11:07 TO 11:18 (RUNNING 00:00:30.667)**

07 Q. Could you please turn to the next page  
08 L0260593?  
09 A. I have it.  
10 Q. Do you see the bottom of the page where it  
11 says, "Services" and then to the right there  
12 is a paragraph?  
13 A. I do.  
14 Q. Underneath that it says Fisher RIMS?  
15 A. It does.  
16 Q. And then above that you see "Use in Commerce,  
17 August 1992"?  
18 A. Yes.

**8. PAGE 12:03 TO 12:15 (RUNNING 00:00:33.933)**

03 Q. Now you see next to it services it says,  
04 "Computer-based services for processing  
05 requisitions, entering purchase orders,  
06 maintaining inventory records, transferring  
07 related reports and data to other computers  
08 and generating documents for picking, packing,  
09 shipping and receiving requisitioned and  
10 ordered products." Do you see that paragraph?  
11 A. I do.  
12 Q. Was it your understanding that those are the  
13 services that were being used by Fisher RIMS  
14 in August of 1992?  
15 A. It is.

**9. PAGE 13:08 TO 14:07 (RUNNING 00:01:07.867)**

08 Q. Could you turn to L0260594, the next page.  
09 A. Okay.  
10 Q. Again, do you see on this page where it says,  
11 "Used in Commerce, August 1992"?  
12 A. I see that.  
13 Q. And below it has services and it has a similar  
14 paragraphs talking about those services?  
15 A. Right.  
16 Q. Is it your understanding that this Fisher RIMS  
17 mark was being used in Commerce in 1992?  
18 A. It is.  
19 Q. Could you please turn to the next page,  
20 L0260595?  
21 A. I have that.  
22 Q. What is this document?  
23 A. It appears to be the cover of a commercial  
24 brochure entitled Fisher RIMS.  
25 Q. And you see at the bottom where it says, "A  
00014:01 revolutionary electronic Requisition and  
02 Inventory Management System"?  
03 A. Yes.  
04 Q. Was it your understanding that the Fisher RIMS

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05           was a requisition and inventory management  
06           system?  
07   A.       It was.

**10. PAGE 14:12 TO 15:10 (RUNNING 00:00:57.933)**

12   Q.     You see that this page has what looks to be a  
13       series of bullet points describing Fisher  
14       RIMS?  
15   A.     I see that.  
16   Q.     Do you see the bullet point one says,  
17       "Consolidates all supplier activity, including  
18       third-party and administrative purchases"?  
19   A.     I see that.  
20   Q.     Do you see bullet point four that says,  
21       "Allows flexible remote requisitioning by  
22       formatted screen, telephone, fax or bar code  
23       scanning"?  
24   A.     I see that.  
25   Q.     Do you see bullet point it looks like maybe  
00015:01       bullet point eight. It says,  
02       "Cross-references your stock numbers and all  
03       your supplier numbers."  
04   A.     Yes.  
05   Q.     And then bullet point 15, do you see that? It  
06       says "Utilizes file transfers and EDI"?  
07   A.     I see that.  
08   Q.     And bullet point 17 says, "Utilizes OS/2  
09       operating system, relational database."  
10   A.     Right.

**11. PAGE 15:15 TO 15:17 (RUNNING 00:00:08.400)**

15   Q.     Is it your understanding that the Fisher RIMS  
16       system had these features?  
17   A.     In general, yes.

**12. PAGE 15:18 TO 16:02 (RUNNING 00:00:37.800)**

18   Q.     To the best of your knowledge this document  
19       starting at page L0260595 to L0260608 -- to  
20       the best of your knowledge was this document  
21       used in Commerce at the time this application  
22       was filed?  
23   A.     It is the same answer I gave before. To the  
24       best of my knowledge that would be the case.  
25       The facts are accurately recorded. If this  
00016:01       was attached to it, that was the document that  
02       was in Commerce -- used in Commerce.

**13. PAGE 16:10 TO 16:12 (RUNNING 00:00:06.738)**

10   Q.     When you were working at Fisher, did you ever  
11       work with Fisher on its 10-Ks?  
12   A.     I don't really recall doing that.

**14. PAGE 16:15 TO 16:24 (RUNNING 00:00:40.933)**

15   Q.     Can you tell me what a 10-K is?  
16   A.     The 10-K is the annual report that public  
17       companies are required to file with the  
18       Securities and Exchange Commission?  
19   Q.     Can you please turn to what has been marked as  
20       Lawson Exhibit No. 42, L0343548 to L0343586.  
21   A.     I have that.  
22   Q.     What is this document?  
23   A.     This is a form 10-K for Fisher Scientific  
24       International for, I guess, for 1993.

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**28. PAGE 35:15 TO 35:24 (RUNNING 00:00:28.663)**

15 Q. Were you aware that there were three patents  
16 granted by the patent office for the  
17 electronic sourcing system?  
18 A. I was not.  
19 Q. Would the company expend resources seeking to  
20 obtain intellectual property protection for  
21 inventions that it thought was worthless? Is  
22 that part of the policy of the company?  
23 A. Well, I can't speak for others but it doesn't  
24 make much sense to me.

**29. PAGE 36:09 TO 41:15 (RUNNING 00:06:16.683)**

09 Q. Understood, but as general counsel at the time  
10 from the -- just focussing on the 1992 to 1996  
11 period you weren't authorizing Mr. Dornburg to  
12 file applications for patents at the patent  
13 office that the company thought had no value,  
14 correct?  
15 A. I wasn't, but I don't know if I was involved  
16 in the patent applications or not since you  
17 haven't shown me anything with my signature on  
18 it.  
19 Q. I am not asking you about what you had your  
20 signature on. As general counsel, was it the  
21 policy of the company to file applications to  
22 the patent office that the company thought had  
23 no value? Yes or no?  
24 A. I would not have executed such a policy, no.  
25 Q. I didn't think you would. All right. Let me  
00037:01 ask you about some of these exhibits if you  
02 have them in front of you. Let's start out  
03 with -- first you were asked some questions  
04 about Exhibit No. 40, which is this trademark  
05 application that bears your signature in  
06 various places. Do you recall that?  
07 A. I do.  
08 Q. Do you have it in front of you?  
09 A. I do.  
10 Q. Let's just skip over some of the stuff and go  
11 right to the brochure. You called it a  
12 marketing brochure. Do you recall that? That  
13 starts at page 595 at the bottom right.  
14 A. Okay.  
15 Q. It is a marketing brochure, correct?  
16 A. That is what it looks like.  
17 Q. Is it not a technical document, right, like a  
18 manual that would help you understand the  
19 functioning of the Fisher RIMS system,  
20 correct?  
21 A. I assume not. It looks like a commercial  
22 brochure to me.  
23 Q. For consumption of potential --  
24 A. Customers.  
25 Q. -- customers of the RIMS system, correct?  
00038:01 A. That is my understanding.  
02 Q. You were asked some questions about some  
03 bullet points that appear at page -- it ends  
04 with 598. Do you recall that?  
05 A. I do.  
06 Q. You have no independent knowledge as to  
07 whether or not the RIMS system in this period  
08 of time say in 1992 or so had that  
09 functionality, correct?  
10 A. I actually think that it had this genre of

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11           functionality. That is what it was designed  
12           to do. It was designed to take over. I know  
13           what you are asking me but my understanding  
14           was that the RIMS system was designed to take  
15           over the inventory storeroom of large  
16           customers and to manage it from the beginning  
17           to the end, from purchase to the lab bench for  
18           the customer and that it needed features like  
19           these to be effective. I have no specific  
20           knowledge of each one of these things in  
21           detail, no.

22       Q.    Fine. Thank you. You just confirmed for me  
23           on page 598 the documentation that we are  
24           looking at with these bullet points Ms. Hughey  
25           asked you about, there is no mention at all  
00039:01       about catalogs, correct?

02       A.    There may not have --

03       Q.    Does the word catalog appear there?

04       A.    Does the word catalog appear, no, but that is  
05           what they would be accessing would be the  
06           catalog system.

07       Q.    The Fisher Catalog?

08       A.    I think it was intended to be able to manage  
09           other items otherwise it wouldn't have been  
10           able to replace --

11       Q.    Does it have any discussion of the word  
12           catalog anywhere on this page, yes or no? Can  
13           you answer that fairly?

14       A.    I would have to look. It says, "Consolidates  
15           all supplier activity including third-party  
16           and administrative purchases." It doesn't  
17           have the word catalog, but that is my  
18           understanding.

19       Q.    Fair enough. How many iterations did the  
20           Fisher RIMS system go through?

21       A.    I don't know.

22       Q.    The inventors say it went through many  
23           iterations. Do you know any of the trade  
24           names that the iterations went through?

25       A.    I don't know.

00040:01       Q.    Do you know how the features and functionality  
02           changed during the period of time from 1992 to  
03           1995, for example?

04       A.    I do not.

05       Q.    Let's focus on Exhibit No. 43 for a moment if  
06           we could. That was the annual report that you  
07           said you had no responsibility for?

08       A.    Right. I have it.

09       Q.    The page that ends with the page No. 589?

10       A.    Okay. I have it.

11       Q.    You were asked about this entry italicized  
12           "Computer order-entry system," do you see  
13           that?

14       A.    I do.

15       Q.    Can you tell me where in this paragraph it  
16           discusses the capabilities searching multiple  
17           vendor catalogs?

18       A.    I don't see it there.

19       Q.    Fair enough. Next paragraph, the Fisher  
20           Catalog. Is there any other catalog other  
21           than the Fisher Catalog mentioned in that  
22           paragraph?

23       A.    The paragraph is entitled "The Fisher  
24           Catalog," so, no.

25       Q.    Fair enough. Is it Exhibit No. 42 was also an  
00041:01       annual report. I took these out of order.